

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE NEW ENGLAND COMPOUNDING)
PHARMACY, INC. PRODUCTS LIABILITY)
LITIGATION)

MDL No. 2419
Dkt. No 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO:)

Suits Naming the Box Hill Defendants¹)

**BOX HILL DEFENDANTS' OPPOSITION TO OR CLARIFICATION OF THE
PLAINTIFFS' STEERING COMMITTEE'S JUNE 1, 2017 STATUS REPORT**

Now come the Defendants, Box Hill Surgery Center, LLC, Ritu T. Bhambhani, M.D., and Ritu T. Bhambhani, M.D., LLC (collectively, the "Defendants" or "Box Hill Defendants"), by and through counsel, hereby oppose or seek to clarify inaccuracies in the Plaintiffs' Steering Committee's ("PSC") June 1, 2017 Status Report found at Docket No. 3397, and state as follows:

1. The PSC states that the first Box Hill bellwether trial is scheduled to begin on October 30, 2017 and cites to Dkt. 3301 for support.² That statement is inaccurate. While Dkt. 3301 sets discovery deadlines for the Box Hill cases, it does not establish a trial date. The Court did issue a separate Order attempting to unilaterally select the Box Hill bellwether cases and trial dates.³ The Box Hill Defendants, however, filed an objection since the Order did not reflect the deadlines imposed by the previously issued scheduling order, the Court did not choose cases that had previously been proposed by either party, and because counsel for Box Hill had not been

¹ Those lawsuits specifically include: *Handy v. Box Hill Surgery Center, LLC, et al.* No. 1:14-cv-14019-RWZ; *Armetta v. Box Hill Surgery Center, LLC, et al.* No. 1:14-cv-14022-RWZ; *Torbeck v. Box Hill Surgery Center, LLC, et al.* No. 1:14-cv-14023-RWZ; *Kashi v. Box Hill Surgery Center, LLC, et al.* No. 1:14-cv-14026-RWZ; *Bowman v. Box Hill Surgery Center, LLC, et al.* No. 1:14-cv-14028-RWZ; *Dreisch v. Box Hill Surgery Center, LLC, et al.* No. 1:14-cv-14029-RWZ; *Davis v. Box Hill Surgery Center, LLC, et al.* No. 1:14-cv-14033-RWZ; *Farthing v. Box Hill Surgery Center, LLC, et al.* No. 1:14-cv-14036-RWZ.

² Dkt. 3397 at 7.

³ Dkt. 3357.

consulted as to available trial dates and are otherwise unavailable for a trial starting October 30, 2017 for a host of reasons. Accordingly, the Court acknowledged the issues with the Order and vacated the Order on the record at the April Status Conference. Several alternatives were offered and the Court stated that it would discuss and attempt to coordinate the issues concerning trial and venue with the judge in the Circuit Court for Harford County, Maryland, where the state court cases were pending and where a trial date is set in May 2018.

2. In addition to the above, in the Procedural Background section of the PSC's Status Report,⁴ the PSC attempts to give the Court the reasoning for the Box Hill Defendants motion for remand and provides incomplete information by simply saying that the Box Hill Defendants rely on other cases against Box Hill pending in Maryland state court. As the Court hopefully understands from reading the previously filed motions and memorandum,⁵ additional cases in state court may be "a reason," but they are far from the only reason. The Box Hill Defendants rely on what has been previously filed in support of remand and hopes this Court will do the same.

WHEREFORE, for the aforementioned reasons, the Box Hill Defendants seek to clarify the information provided to this Court by the PSC in their June 1, 2017 Status Report, as reflected above.

Dated: June 2, 2017

Respectfully submitted,

/s/ Gregory K. Kirby
Gregory K. Kirby, Esq.
PESSIN KATZ LAW, P.A.
901 Dulaney Valley Road, Suite 500
Towson, Maryland 21228
Tel: (410) 938-8800
Attorneys for the Box Hill Defendants

⁴ Dkt. 3397

⁵ Dkt. 3380.

CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2017, I served the above Motion upon the Clerk of the Court, using the CM/ECF system, which then sent a notification of such filing (NEF) to all counsel of record.

/s/ Gregory K. Kirby

Gregory K. Kirby, Esq.

Attorneys for the Box Hill Defendants